

Attorney Docket Number 2001.001 US

III. Remarks and Conclusion

Claims 11-24 are presently pending. Claims 1-10 were cancelled without prejudice or disclaimer in the preliminary amendment.

A. 35 USC §112, second paragraph rejection

Claims 21 and 22 stand rejected as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention. The Examiner asserts that the claims are rendered vague and indefinite for the recitation of the term immunomodulator. As the term immunomodulator is an art accepted term, Applicants respectfully request reconsideration of the rejection.

On page 7, lines 14-20 of the specification, support for the claim can be found. The term "immunomodulator" is a term of art defined as a compound that is part of the immune system and that enhances the immune response induced against a certain (foreign) antigen. In an embodiment, the immunomodulator expressed by an embodiment of the ITLV vector mutant enhances the immune response induced against the ITLV mutant itself (or against another heterologous antigen expressed by the ITLV mutant) resulting in an enhanced protection against ITLV (or against the pathogen from which the heterologous antigen is derived).

Further, the term is a well recognized term of art and used in many texts (see also the standard textbook Veterinary Vaccinology, eds: Pastoret et al., Elsevier, 1997, pages 276-277). Accordingly, the term is very well known and understood in the art and the specification provides for its understanding. Therefore, Applicants respectfully request reconsideration of the rejection. Applicants have included a copy of the article from Veterinary Vaccinology

B. 35 USC §101

Claims 11-20, 23 and 24 stand rejected as not directed to patentable subject matter. The

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Examiner contends that vaccine has the same characteristics and utility as that found in nature.

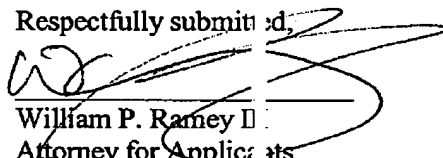
Applicants respectfully request reconsideration in light of this response.

The present claims are directed to a vaccine comprising the defined ILTV mutant and a pharmaceutically acceptable carrier or diluent, i.e. to a pharmaceutical composition comprising an active ingredient together with further (an) accessory compound(s). This combination is not found in nature. Accordingly, the claims are directed towards patentable subject matter.

First, such a composition does not have the same characteristics and utility as something found in nature. Second, the ILTV mutant defined in the claims is a ILTV mutant that is genetically modified such that it is not able to express a native UL0 protein. Such a mutant is not found in nature, but, on the contrary, results from "the hand of man", i.e. from the introduction of a mutation in the gene encoding the UL0 protein (see the Examples). Accordingly, Applicants respectfully request reconsideration of the rejections.

In conclusion, Applicants respectfully assert that the claims are in a condition for allowance and request such action. Please charge any required fees, including the one-month extension of time, and credit any credits to deposit account 02 2334. Applicants respectfully request the Examiner contact Applicant's attorney for an interview to facilitate allowance of this case.

Respectfully submitted,


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